United Nations / International Maritime Organization

UNITED NATIONS / INTERNATIONAL MARITIME ORGANIZATION
CONFERENCE OF PLENIPOTENTIARIES ON A CONVENTION
ON MARITIME LIENS AND MORTGAGES

Held at the Palais des Nations, Geneva,
from 19 April to 6 May 1993

Volume I

Final Act

and

International Convention on Maritime Liens and Mortgages, 1993

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Final Act of the United Nations/International Maritime Organization Conference of Plenipotentiaries on a Convention on Maritime Liens and Mortgages

1. The General Assembly of the United Nations, by resolution 46/213 of 20 December 1991, decided that a United Nations/International Maritime Organization Conference of Plenipotentiaries on a Convention on Maritime Liens and Mortgages should be convened in order to consider a draft convention and to embody the results of its work in a convention on maritime liens and mortgages.

2. The United Nations/International Maritime Organization Conference of Plenipotentiaries on a Convention on Maritime Liens and Mortgages, was convened at Geneva from 19 April to 6 May 1993.

3. Representatives from the following States participated in the Conference: Algeria, Argentina, Australia, Austria, Belgium, Bolivia, Brazil, Bulgaria, Canada, Chile, China, Colombia, Côte d'Ivoire, Cuba, Cyprus, Democratic People's Republic of Korea, Denmark, Egypt, Finland, France, Gabon, Germany, Ghana, Greece, Guinea, India, Indonesia, Iran (Islamic Republic of), Iraq, Israel, Italy, Japan, Kenya, Kuwait, Latvia, Liberia, Madagascar, Mauritius, Mexico, Morocco, Netherlands, Nigeria, Norway, Panama, Peru, Philippines, Poland, Portugal, Republic of Korea, Russian Federation, Senegal, Spain, Sri Lanka, Sudan, Sweden, Switzerland, Syrian Arab Republic, Thailand, Tunisia, Turkey, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America, Uruguay, Venezuela.

4. Hong Kong, an associate member of the International Maritime Organization, was represented by an observer.

5. The following specialized agencies were represented by an observer: International Labour Organisation, World Meteorological Organization.

6. The following intergovernmental organizations were represented by an observer: European Economic Community, League of Arab States, Organization for Economic Co-operation and Development, Organization of African Unity.

7. The following non-governmental organizations were represented by an observer: Association of African Shipping Lines, Baltic and International Maritime Council, Iberoamerican Institute of Maritime Law, International Association of Ports and Harbours, International Chamber of Commerce, International Chamber of Shipping, International Confederation of Free Trade Unions, International Maritime Committee, International Ship Suppliers Association, Latin American Association of Navigational Law and Law of the Sea.

8. The following committees were established by the Conference:

General Committee

President: Mr. Walter Müller (Switzerland)
Vice-Presidents: Brazil, Canada, China, Denmark, Indonesia, Liberia and Poland.
Chairman of the Main Committee: Mr. G.G. Ivanov (Russian Federation)
Rapporteur-General: Mr. Domingo Nicolas Rotondaro (Argentina).

Main Committee

Chairman: Mr. G.G. Ivanov (Russian Federation)
Vice-Chairman-cum-Rapporteur: Mr. J.E. de Boer (Netherlands)

Drafting Committee

Chairman: Mrs. B. Czerwenka (Germany)
Core membership: Algeria, Argentina, China, Côte d'Ivoire, Egypt, France, Germany, Indonesia, Mexico, Nigeria, Norway, Poland, Spain, Russian Federation, United Kingdom of Great Britain and Northern Ireland, United States of America.

Credentials Committee

Chairman: Mr. Daniel D.C. Don Nanjira (Kenya)
Members: Argentina, Australia, China, Ghana, India, Kenya, Russian Federation, United States of America and Venezuela.

9. The secretariat of the Conference included the following officers: Secretary-General of UNCTAD, Mr. K.K.S. Dadzie; Secretary-General of IMO, Mr. W.A. O'Neil; the Executive Secretary, Mr. A. Bouayad, Director, Services Development Division, UNCTAD, and subsequently Mr. R. Vogel, Deputy Director, UNCTAD; the Deputy Executive Secretary, Mr. E.M. Göransson, Director, Legal Affairs and External Relations Division, IMO; Mrs. Monica N. Mbanefo, Senior Deputy Director, IMO; Mr. Agustin Blanco-Bazan, Senior Legal Officer, IMO; Ms. L. Young, Administrative Officer, IMO; Mr. R. Vigil, Chief, Maritime Legislation Section, UNCTAD; Ms. M. Faghfouri, Legal Affairs Officer, UNCTAD; Mr. Carlos Moreno, Legal Affairs Officer, UNCTAD; Mr. E. Chrispeels, Senior Legal Officer, UNCTAD; Mr. A. Behnam, Secretary of the Conference, UNCTAD.

10. The Conference had before it, as a basis for its work, the draft articles for a Convention on maritime liens and mortgages [1], prepared by the Joint UNCTAD/IMO Intergovernmental Group of Experts on Maritime Liens and Mortgages and Related Subjects, and the compilation of comments and proposals by Governments, and by intergovernmental and non-governmental organizations, on the draft convention on maritime liens and mortgages [2]. The Conference adopted its rules of procedure [3] and its agenda [4].

11. On the basis of its deliberations as recorded in its report [5], the Conference established the text of the INTERNATIONAL CONVENTION ON MARITIME LIENS AND MORTGAGES, 1993.

12. The Conference adopted on 6 May 1993 resolution entitled "The Consideration of a Possible Review of the International Convention for the Unification of Certain Rules Relating to the Arrest of Sea-going Ships, 1952".

13. The text of the Convention was adopted by the Conference on 6 May 1993. The Convention will be open for signature at United Nations Headquarters, New York, from 1 September 1993 to and including 31 August 1994.

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[1] A/CONF.162/4.

[2] A/CONF.162/3 and Add.1, Add.2 and Add.3.

[3] A/CONF.162/2 and A/CONF.162/5.

[4] A/CONF.162/1.

[5] A/CONF.162/8.

Done at Geneva, on this sixth day of May, one thousand nine hundred and ninety-three, in one original in the Arabic, Chinese, English, French, Russian and Spanish languages, all texts being equally authentic. The original of the Final Act shall be deposited in the archives of the United Nations Secretariat.

W. Müller
President of the Conference

K.K.S. Dadzie
Secretary-General of UNCTAD

W.A. O'Neil
Secretary-General of IMO

R. Vogel
Executive Secretary of the Conference

E.M. Göransson
Deputy Executive Secretary of the Conference

A. Behnam
Secretary of the Conference

E. Chrispeels
Senior Legal Officer

IN WITNESS WHEREOF the undersigned representatives have signed this Final Act.

The States whose representatives signed the Final Act are: Algeria, Argentina, Australia, Austria, Belgium, Brazil, Canada, China, Colombia, Côte d'Ivoire, Cuba, Cyprus, Democratic People's Republic of Korea, Denmark, Egypt, Finland, France, Gabon, Germany, Ghana, Greece, Guinea, India, Indonesia, Iran (Islamic Republic of), Israel, Italy, Japan, Kenya, Kuwait, Liberia, Madagascar, Mexico, Morocco, Netherlands, Nigeria, Norway, Panama, Peru, Philippines, Poland, Portugal, Republic of Korea, Russian Federation, Senegal, Spain, Sudan, Sweden, Switzerland, Syrian Arab Republic, Thailand, Tunisia, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America, Uruguay, and Venezuela.

Annex

INTERNATIONAL CONVENTION ON MARITIME LIENS AND MORTGAGES, 1993

The States Parties to this Convention,

Conscious of the need to improve conditions for ship financing and the development of national merchant fleets,

Recognizing the desirability of international uniformity in the field of maritime liens and mortgages, and therefore

Convinced of the necessity for an international legal instrument governing maritime liens and mortgages,

Have decided to conclude a Convention for this purpose and have therefore agreed as follows:

Article 1

Recognition and enforcement of mortgages, "hypothèques" and charges

Mortgages, "hypothèques" and registrable charges of the same nature, which registrable charges of the same nature will be referred to hereinafter as "charges", effected on seagoing vessels shall be recognized and enforceable in States Parties provided that:

(a) such mortgages, "hypothèques" and charges have been effected and registered in accordance with the law of the State in which the vessel is registered;

(b) the register and any instruments required to be deposited with the registrar in accordance with the law of the State in which the vessel is registered are open to public inspection, and that extracts from the register and copies of such instruments are obtainable from the registrar; and

(c) either the register or any instruments referred to in subparagraph (b) specifies at least the name and address of the person in whose favour the mortgage, "hypothèque" or charge has been effected or that it has been issued to bearer, the maximum amount secured, if that is a requirement of the law of the State of registration or if that amount is specified in the instrument creating the mortgage, "hypothèque" or charge, and the date and other particulars which, according to the law of the State of registration, determine the ranking in relation to other registered mortgages, "hypothèques" and charges.

Article 2

Ranking and effects of mortgages, "hypothèques" and charges

The ranking of registered mortgages, "hypothèques" or charges as between themselves and, without prejudice to the provisions of this Convention, their effect in regard to third parties shall be determined by the law of the State of registration; however, without prejudice to the provisions of this Convention, all matters relating to the procedure of enforcement shall be regulated by the law of the State where enforcement takes place.

Article 3

Change of ownership or registration

1. With the exception of the cases provided for in articles 11 and 12, in all other cases that entail the deregistration of the vessel from the register of a State Party, such State Party shall not permit the owner to deregister the vessel unless all registered mortgages, "hypothèques" or charges are previously deleted or the written consent of all holders of such mortgages, "hypothèques" or charges is obtained. However, where the deregistration of the vessel is obligatory in accordance with the law of a State Party, otherwise than as a result of a voluntary sale, the holders of registered mortgages, "hypothèques" or charges shall be notified of the pending deregistration in order to enable such holders to take appropriate action to protect their interests; unless the holders consent, the deregistration shall not be implemented earlier than after a lapse of a reasonable period of time which shall be not less than three months after the relevant notification to such holders.

2. Without prejudice to article 12, paragraph 5, a vessel which is or has been registered in a State Party shall not be eligible for registration in another State Party unless either:

(a) a certificate has been issued by the former State to the effect that the vessel has been deregistered; or

(b) a certificate has been issued by the former State to the effect that the vessel will be deregistered with immediate effect, at such time as the new registration is effected. The date of deregistration shall be the date of the new registration of the vessel.

Article 4

Maritime liens

1. Each of the following claims against the owner, demise charterer, manager or operator of the vessel shall be secured by a maritime lien on the vessel:

(a) claims for wages and other sums due to the master, officers and other members of the vessel's complement in respect of their employment on the vessel, including costs of repatriation and social insurance contributions payable on their behalf;

(b) claims in respect of loss of life or personal injury occurring, whether on land or on water, in direct connection with the operation of the vessel;

(c) claims for reward for the salvage of the vessel;

(d) claims for port, canal, and other waterway dues and pilotage dues;

(e) claims based on tort arising out of physical loss or damage caused by the operation of the vessel other than loss of or damage to cargo, containers and passengers' effects carried on the vessel.

2. No maritime lien shall attach to a vessel to secure claims as set out in subparagraphs (b) and (e) of paragraph 1 which arise out of or result from:

(a) damage in connection with the carriage of oil or other hazardous or noxious substances by sea for which compensation is payable to the claimants pursuant to international conventions or national law providing for strict liability and compulsory insurance or other means of securing the claims; or

(b) the radioactive properties or a combination of radioactive properties with toxic, explosive or other hazardous properties of nuclear fuel or of radioactive products or waste.

Article 5

Priority of maritime liens

1. The maritime liens set out in article 4 shall take priority over registered mortgages, "hypothèques" and charges, and no other claim shall take priority over such maritime liens or over such mortgages, "hypothèques" or charges which comply with the requirements of article 1, except as provided in paragraphs 3 and 4 of article 12.

2. The maritime liens set out in article 4 shall rank in the order listed, provided however that maritime liens securing claims for reward for the salvage of the vessel shall take priority over all other maritime liens which have attached to the vessel prior to the time when the operations giving rise to the said liens were performed.

3. The maritime liens set out in each of subparagraphs (a), (b), (d) and (e) of paragraph 1 of article 4 shall rank pari passu as between themselves.

4. The maritime liens securing claims for reward for the salvage of the vessel shall rank in the inverse order of the time when the claims secured thereby accrued. Such claims shall be deemed to have accrued on the date on which each salvage operation was terminated.

Article 6

Other maritime liens

Each State Party may, under its law, grant other maritime liens on a vessel to secure claims, other than those referred to in article 4, against the owner, demise charterer, manager or operator of the vessel, provided that such liens:

(a) shall be subject to the provisions of articles 8, 10 and 12;

(b) shall be extinguished

(i) after a period of 6 months, from the time when the claims secured thereby arose unless, prior to the expiry of such period, the vessel has been arrested or seized, such arrest or seizure leading to a forced sale; or

(ii) at the end of a period of 60 days following a sale to a bona fide purchaser of the vessel, such period to commence on the date on which the sale is registered in accordance with the law of the State in which the vessel is registered following the sale;

whichever period expires first; and

(c) shall rank after the maritime liens set out in article 4 and also after registered mortgages, "hypothèques" or charges which comply with the provisions of article 1.

Article 7

Rights of retention

1. Each State Party may grant under its law a right of retention in respect of a vessel in the possession of either:

(a) a shipbuilder, to secure claims for the building of the vessel; or

(b) a shiprepairer, to secure claims for repair, including reconstruction of the vessel, effected during such possession.

2. Such right of retention shall be extinguished when the vessel ceases to be in the possession of the shipbuilder or shiprepairer, otherwise than in consequence of an arrest or seizure.

Article 8

Characteristics of maritime liens

Subject to the provisions of article 12, the maritime liens follow the vessel, notwithstanding any change of ownership or of registration or of flag.

Article 9

Extinction of maritime liens by lapse of time

1. The maritime liens set out in article 4 shall be extinguished after a period of one year unless, prior to the expiry of such period, the vessel has been arrested or seized, such arrest or seizure leading to a forced sale.

2. The one-year period referred to in paragraph 1 shall commence:

(a) with respect to the maritime lien set out in article 4, paragraph 1(a), upon the claimant's discharge from the vessel;

(b) with respect to the maritime liens set out in article 4, paragraph 1 (b) to (e), when the claims secured thereby arise;

and shall not be subject to suspension or interruption, provided, however, that time shall not run during the period that the arrest or seizure of the vessel is not permitted by law.

Article 10

Assignment and subrogation

1. The assignment of or subrogation to a claim secured by a maritime lien entails the simultaneous assignment of or subrogation to such a maritime lien.

2. Claimants holding maritime liens may not be subrogated to the compensation payable to the owner of the vessel under an insurance contract.

Article 11

Notice of forced sale

1. Prior to the forced sale of a vessel in a State Party, the competent authority in such State Party shall ensure that notice in accordance with this article is provided to:

(a) the authority in charge of the register in the State of registration;

(b) all holders of registered mortgages, "hypothèques" or charges which have not been issued to bearer;

(c) all holders of registered mortgages, "hypothèques" or charges issued to bearer and all holders of the maritime liens set out in article 4, provided that the competent authority conducting the forced sale receives notice of their respective claims; and

(d) the registered owner of the vessel.

2. Such notice shall be provided at least 30 days prior to the forced sale and shall contain either:

(a) the time and place of the forced sale and such particulars concerning the forced sale or the proceedings leading to the forced sale as the authority in a State Party conducting the proceedings shall determine is sufficient to protect the interests of persons entitled to notice; or,

(b) if the time and place of the forced sale cannot be determined with certainty, the approximate time and anticipated place of the forced sale and such particulars concerning the forced sale as the authority in a State Party conducting the proceedings shall determine is sufficient to protect the interests of persons entitled to notice.

If notice is provided in accordance with subparagraph (b), additional notice of the actual time and place of the forced sale shall be provided when known but, in any event, not less than seven days prior to the forced sale.

3. The notice specified in paragraph 2 of this article shall be in writing and either given by registered mail, or given by any electronic or other appropriate means which provide confirmation of receipt, to the persons interested as specified in paragraph 1, if known. In addition, the notice shall be given by press announcement in the State where the forced sale is conducted and, if deemed appropriate by the authority conducting the forced sale, in other publications.

Article 12

Effects of forced sale

1. In the event of the forced sale of the vessel in a State Party, all registered mortgages, "hypothèques" or charges, except those assumed by the purchaser with the consent of the holders, and all liens and other encumbrances of whatsoever nature, shall cease to attach to the vessel, provided that:

(a) at the time of the sale, the vessel is in the area of the jurisdiction of such State; and

(b) the sale has been effected in accordance with the law of the said State and the provisions of article 11 and this article.

2. The costs and expenses arising out of the arrest or seizure and subsequent sale of the vessel shall be paid first out of the proceeds of sale. Such costs and expenses include, inter alia, the costs for the upkeep of the vessel and the crew as well as wages, other sums and costs referred to in article 4, paragraph 1 (a), incurred from the time of arrest or seizure. The balance of the proceeds shall be distributed in accordance with the provisions of this Convention, to the extent necessary to satisfy the respective claims. Upon satisfaction of all claimants, the residue of the proceeds, if any, shall be paid to the owner and it shall be freely transferable.

3. A State Party may provide in its law that, in the event of the forced sale of a stranded or sunken vessel following its removal by a public authority in the interest of safe navigation or the protection of the marine environment, the costs of such removal shall be paid out of the proceeds of the sale, before all other claims secured by a maritime lien on the vessel.

4. If at the time of the forced sale the vessel is in the possession of a shipbuilder or of a shiprepairer who under the law of the State Party in which the sale takes place enjoys a right of retention, such shipbuilder or shiprepairer must surrender possession of the vessel to the purchaser but is entitled to obtain satisfaction of his claim out of the proceeds of sale after the satisfaction of the claims of holders of maritime liens mentioned in article 4.

5. When a vessel registered in a State Party has been the object of a forced sale in any State Party, the competent authority shall, at the request of the purchaser, issue a certificate to the effect that the vessel is sold free of all registered mortgages, "hypothèques" or charges, except those assumed by the purchaser, and of all liens and other encumbrances, provided that the requirements set out in paragraph 1 (a) and (b) have been complied with. Upon production of such certificate, the registrar shall be bound to delete all registered mortgages, "hypothèques" or charges except those assumed by the purchaser, and to register the vessel in the name of the purchaser or to issue a certificate of deregistration for the purpose of new registration, as the case may be.

6. States Parties shall ensure that any proceeds of a forced sale are actually available and freely transferable.

Article 13

Scope of application

1. Unless otherwise provided in this Convention, its provisions shall apply to all seagoing vessels registered in a State Party or in a State which is not a State Party, provided that the latter's vessels are subject to the jurisdiction of the State Party.

2. Nothing in this Convention shall create any rights in, or enable any rights to be enforced against, any vessel owned or operated by a State and used only on Government non-commercial service.

Article 14

Communication between States Parties

For the purpose of articles 3, 11 and 12, the competent authorities of the States Parties shall be authorized to correspond directly between themselves.

Article 15

Conflict of conventions

Nothing in this Convention shall affect the application of any international convention providing for limitation of liability or of national legislation giving effect thereto.

Article 16

Temporary change of flag

If a seagoing vessel registered in one State is permitted to fly temporarily the flag of another State, the following shall apply:

(a) For the purposes of this article, references in this Convention to the "State in which the vessel is registered" or to the "State of registration" shall be deemed to be references to the State in which the vessel was registered immediately prior to the change of flag, and references to "the authority in charge of the register" shall be deemed to be references to the authority in charge of the register in that State.

(b) The law of the State of registration shall be determinative for the purpose of recognition of registered mortgages, "hypothèques" and charges.

(c) The State of registration shall require a cross-reference entry in its register specifying the State whose flag the vessel is permitted to fly temporarily; likewise, the State whose flag the vessel is permitted to fly temporarily shall require that the authority in charge of the vessel's record specifies by a cross-reference in the record the State of registration.

(d) No State Party shall permit a vessel registered in that State to fly temporarily the flag of another State unless all registered mortgages, "hypothèques" or charges on that vessel have been previously satisfied or the written consent of the holders of all such mortgages, "hypothèques" or charges has been obtained.

(e) The notice referred to in article 11 shall be given also to the competent authority in charge of the vessel's record in the State whose flag the vessel is permitted to fly temporarily.

(f) Upon production of the certificate of deregistration referred to in article 12 paragraph 5, the competent authority in charge of the vessel's record in the State whose flag the vessel is permitted to fly temporarily shall, at the request of the purchaser, issue a certificate to the effect that the right to fly the flag of that State is revoked.

(g) Nothing in this Convention is to be understood to impose any obligation on States Parties to permit foreign vessels to fly temporarily their flag or national vessels to fly temporarily a foreign flag.

Article 17

Depositary

This Convention shall be deposited with the Secretary-General of the United Nations.

Article 18

Signature, ratification, acceptance, approval and accession

1. This Convention shall be open for signature by any State at the Headquarters of the United Nations, New York, from 1 September 1993 to 31 August 1994 and shall thereafter remain open for accession.

2. States may express their consent to be bound by this Convention by:

(a) signature without reservation as to ratification, acceptance or approval; or

(b) signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval; or

(c) accession.

3. Ratification, acceptance, approval or accession shall be effected by the deposit of an instrument to that effect with the depositary.

Article 19

Entry into force

1. This Convention shall enter into force 6 months following the date on which 10 States have expressed their consent to be bound by it.

2. For a State which expresses its consent to be bound by this Convention after the conditions for entry into force thereof have been met, such consent shall take effect 3 months after the date of expression of such consent.

Article 20

Revision and amendment

1. A conference of States Parties for the purpose of revising or amending this Convention shall be convened by the Secretary-General of the United Nations at the request of one-third of the States Parties.

2. Any consent to be bound by this Convention, expressed after the date of entry into force of an amendment to this Convention, shall be deemed to apply to the Convention, as amended.

Article 21

Denunciation

1. This Convention may be denounced by any State Party at any time after the date on which this Convention enters into force for that State.

2. Denunciation shall be effected by the deposit of an instrument of denunciation with the depositary.

3. A denunciation shall take effect one year, or such longer period as may be specified in the instrument of denunciation, after the receipt of the instrument of denunciation by the depositary.

Article 22

Languages

This Convention is established in a single original in the Arabic, Chinese, English, French, Russian and Spanish languages, each text being equally authentic.

DONE AT Geneva this sixth day of May, one thousand nine hundred and ninety-three.

IN WITNESS WHEREOF the undersigned being duly authorized by their respective Governments for that purpose have signed this Convention.

A/CONF.162/8
21 July 1993

Original: ENGLISH

United Nations/International Maritime Organization

UNITED NATIONS/INTERNATIONAL MARITIME ORGANIZATION CONFERENCE OF PLENIPOTENTIARIES ON A CONVENTION ON MARITIME LIENS AND MORTGAGES

Held at the Palais des Nations, Geneva,
from 19 April to 6 May 1993

Volume II

Report of the Conference

GE.93-52669 (E)

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INTRODUCTION

1. The United Nations General Assembly, by resolution 46/213, decided to convene a United Nations/International Maritime Organization Conference of Plenipotentiaries on a Convention on Maritime Liens and Mortgages during the first half of 1993 for a period of three weeks, to consider the draft convention and to embody the results of its work in a convention on maritime liens and mortgages. Accordingly, the Conference of Plenipotentiaries on a Convention on Maritime Liens and Mortgages was convened by the Secretary-General of UNCTAD and by the Secretary-General of the International Maritime Organization and was held at the Palais des Nations, Geneva, from 19 April to 6 May 1993.

2. This report gives a brief account of the proceedings of the plenary meetings of the Conference.

Tribute to the memory of H.E. Mr. Turgut Ozal, President of Turkey

3. At its 1st plenary meeting, on 19 April 1993, the Conference of Plenipotentiaries observed a moment of silence in tribute to the memory of H.E. Mr. Turgut Ozal, President of the Republic of Turkey, who died on 17 April 1993.

4. The representative of Turkey made a brief statement in acknowledgement of the condolences expressed by the Conference.

Chapter I

PREPARATION AND ADOPTION OF A CONVENTION ON MARITIME LIENS AND MORTGAGES (Agenda item 8)

5. The following documents were before the Conference under agenda item 8:

- "Draft articles for a convention on maritime liens and mortgages", prepared by the Joint UNCTAD/IMO Intergovernmental Group of Experts on Maritime Liens and Mortgages and Related Subjects (A/CONF.162/4, also contained in document JIGE(VI)/8)

- Final Report of the Joint Intergovernmental Group of Experts on Maritime Liens and Mortgages and Related Subjects (TD/B/C.4/AC.8/27, LEG/MLM/27, JIGE(VI)/8)

- Report of the Joint UNCTAD/IMO Intergovernmental Group of Experts on Maritime Liens and Mortgages and Related Subjects on its sixth session (TD/B/C.4/AC.8/26, LEG/MLM/26, JIGE(VI)/7)

- "Compilation of comments and proposals by Governments, and by intergovernmental and non-governmental organizations, on the draft convention on maritime liens and mortgages" (A/CONF.162/3 and Add.1-3).

A. General statements

6. The Deputy to the Secretary-General of UNCTAD stated that the Conference marked an important event in cooperation between UNCTAD and IMO in the field of maritime legislation. Recalling the background to the establishment of the Joint UNCTAD/IMO Intergovernmental Group of Experts on Maritime Liens and Mortgages and Related Subjects and to the preparatory work concerning the draft convention, he said that the work of the Conference was of considerable interest to both developed and developing countries and to the international shipping community as a whole. Developing countries in particular would welcome the establishment of a legal framework that would facilitate funding on favourable terms for the construction and purchase of ships. There were of course a number of considerations of a commercial, political and legal nature affecting the decision whether or not to advance finance for ship acquisition. However, it was clear that lack of uniformity in the area of maritime liens and mortgages and inadequate enforcement procedures in some countries would negatively affect decisions of financiers in granting loans.

7. The existing international Conventions had not succeeded in achieving a high level of international uniformity. The current situation concerning maritime liens and mortgages was one of a disunified regime, where financiers, creditors and maritime claimants could not be certain as to the scope, validity and ranking of their security. This situation was a cause of concern, especially for developing countries, which were particularly affected by being unable to obtain sufficient finance for the development of their merchant fleets.

8. One of the main objectives of the Joint Group in the preparation of the draft articles had been to produce a text which would receive wide international acceptance. Many ideas and approaches had been considered in order to achieve the balanced compromise text. The draft had taken into account, as much as possible, the different approaches to the problem expressed in national legislations. He was therefore convinced that the new convention on maritime liens and mortgages would be an important component of the continuing efforts within the United Nations and IMO to facilitate international maritime transport and world trade in general.

9. The Director, Legal Affairs and External Relations Division, International Maritime Organization (IMO), speaking on behalf of the Secretary-General of IMO, said that the draft convention was a result of the close and most fruitful cooperation between UNCTAD and IMO in the task of achieving international uniformity in rules and regulations of paramount importance for the facilitation of maritime transport and world trade. He stressed, however, that the Conference would only have a successful outcome if compromise and consensus could be achieved in respect of the outstanding issues. It was imperative to adopt a convention that was widely accepted in order to avoid legal uncertainties, unnecessary and cumbersome administrative measures, forum shopping, or inordinate expenses affecting the interests of the shipping and maritime community.

10. One of the most important aims of the new convention was that of encouraging ship financing by limiting the number of maritime liens taking priority over mortgages to those which were indispensable on social and economic grounds. This would facilitate the channelling of financial resources towards the strengthening of merchant fleets in developing countries. A new convention on maritime liens and mortgages would further provide a firm foundation which could enable IMO and UNCTAD to continue their work on the progressive uniformity of maritime law at an international level to the benefit of all parties involved.

11. The representative of Norway referred to the experience in his country, one of the very few to have adopted and implemented the 1967 Convention. Its provisions had proved to be workable and there had been few disputes requiring settlement in court. The draft under consideration at the Conference contained few changes in respect of the 1967 Convention, but it did present some serious problems.

12. In the opinion of his delegation it was in the interests of both the ship-owning and the finance industry that the number of maritime liens be restricted and the "life" of those liens kept short. This basic approach would also be in the interest of States which at present did not have national merchant fleets of a size compatible with their exports/imports and which needed to strengthen their fleets with the help of foreign finance. At present there was no rationale to justify the many liens contained in the 1926 Convention. Accordingly, affording a maritime claim with a lien should be an exception which should be allowable strictly for social or equity reasons.

13. In line with this approach, his delegation felt that the draft convention could be further improved by the deletion from article 4 of the liens

established in respect of claims for port, canal and other waterway dues and pilotage dues. These claims were normally related to the performance of a contract in respect of which the creditworthiness of the owner could be assessed by the authority. In many cases advance payment could be required to allow the ship to enter port, thus securing any eventual claim without need for recourse to a maritime lien.

14. He stated that Norway also favoured the deletion of article 6 on the grounds that article 4 should be exclusive as far as liens were concerned, and he believed that contracting States should not be allowed to legislate on a national basis for additional liens, even if they were given priority after mortgages or hypothèques. Alternatively, and at the very least, a clarification should be included in this provision indicating that the national liens referred to should not have the characteristic of a maritime lien and should not survive a voluntary sale. In connection with the situation of suppliers of goods and services to vessels, his delegation's view was that they should, like other suppliers, make a credit risk assessment rather than extend credit more or less automatically with a hidden charge against the vessel as collateral. In the latter cases, owners who were financially unsound would have the possibility of continuing trading to the detriment of the mortgagee. There were also unfortunately frequent cases in which financially unsound charterers traded on the credit of the owner and the mortgagee without their knowing it. This could only happen when suppliers gave charterers unwarranted credit, knowing that they had a hidden charge against the vessel as security. He also referred to the difficulties which article 6 created with respect to choice of law questions.

15. Bearing in mind the interests of seafarers, he considered that the period provided for the extinction of liens securing their claims should start to run at the time when they left the vessel. He also expressed his delegation's preference that crew wages earned in respect of the time during which the vessel was under arrest be deemed to be costs and expenses arising out of the arrest, with the special privilege afforded to such costs and expenses in accordance with article 11, paragraph 2.

16. The representative of Mexico expressed his delegation's concern at some of the draft articles which were contrary to Mexican national laws. He mentioned as an example articles 4 and 5 regarding priority of maritime liens, which were contrary even to the Mexican constitution. He considered that there was a need for amending some of the draft articles and underlined the desirability of introducing a new article for definitions that would in his delegation's view facilitate the application of the convention.

17. The representative of China stated that since 1978 his country had established a considerable merchant fleet and had set up 140 shipping companies with ships calling at ports in 150 countries. In the promotion of maritime transport and trade, 89 Chinese ports were now open to foreign ships. A new maritime code had been adopted in 1992 which would enter into force on 1 July 1993. It followed the general trend of international legislation and took into consideration the provisions of the 1967 Convention as well as the new draft convention in formulating provisions on maritime liens and ship mortgages. The text of the draft convention could serve as a basis for

discussion at the Conference with the aim of adopting an international convention that would be widely accepted.

18. The representative of the Netherlands said that harmonization of maritime legislation in the field of maritime liens and mortgages was of interest for both developed and developing countries. Such harmonization would facilitate the availability of maritime credit, which was of particular interest for developing countries wishing to develop their own commercial fleets. Since the need for an effective national right for mortgages was generally accepted, mandatory guidelines for national legislation would provide for more unification. He considered the draft articles for a convention on maritime liens and mortgages to be a good starting point for drawing up a new convention on the subject. Finally, he stressed the importance of restricting the number of maritime liens ranking before mortgages and stated his delegation's agreement with the views expressed by the Norwegian delegation on this issue.

19. The representative of the United States of America, noting the difficulties involved in developing an international convention on maritime liens and mortgages, said that, in order to be widely accepted, the new convention would have to balance fairly the maritime interests of shipowners and mortgagees, of those who provided services to ensure the continued safe operation of ships, and of those who suffered harm from the operation of ships, including damage to the environment, unless compensation was provided by another international Convention.

20. He stated that an important purpose underlying the convention was to protect the lender's security in order to encourage greater ship financing. However, equal consideration should be given to other purposes such as ensuring the security for those who extended credit to support a ship's operation by supplying victuals for the crew and services to the vessel.

21. The representative of the International Chamber of Shipping said that shipowners fully supported efforts to adopt a new convention on maritime liens and mortgages to bring genuine uniformity into this complex area of maritime law. The 1967 Convention was broadly satisfactory to shipowners but it had not received worldwide recognition and a new convention was therefore necessary. He hoped that the Conference would succeed in adopting a new instrument, similar to the 1967 Convention, with as few maritime liens as possible, and that the new convention would receive worldwide recognition.

B. Proceedings of the 3rd (closing) plenary meeting, on 6 May 1993

22. The Chairman of the Main Committee, reporting on the substantive work carried out by the Committee on the draft convention on maritime liens and mortgages, highlighted some of the issues concerning the main articles and the discussions held in the Committee. Regarding article 4, which established the list of maritime liens, he observed that, in spite of various proposed amendments, the delicate compromise reached by the Joint Intergovernmental Group of Experts had been maintained. Article 6 had given rise to considerable discussions, as opinions were divided on the desirability of the Convention's containing provisions dealing with maritime liens granted by States Parties under national law. The present text of article 6 embodied the

compromise reached and it was hoped that it would contribute to a wide acceptance of the Convention. Similarly article 7 dealing with rights of retention reflected a compromise, since varying views had been held as to whether or not the Convention should cover that subject. The intention of article 11 was to secure the interests of the mortgagees and of the claimants entitled to receive notice of forced sale of the vessel. Article 12 contained provisions allowing a State Party to provide in its law that the cost of the removal of a sunken vessel by a public authority in the interests of safe navigation or protection of the marine environment should be paid out before claims secured by a maritime lien. The Convention did not include provisions dealing with reservations and the matter was subject to the existing international law.

Action by the Conference

23. At its 3rd (closing) plenary meeting, on 6 May 1993, the Conference adopted the draft articles for an International Convention on Maritime Liens and Mortgages, 1993, as set out in A/CONF.162/L.5, having first finalized article 19 (1) to read "... 10 States have expressed ..." and having also taken note that a number of purely editorial amendments would need to be made to the French text.

24. At the same meeting, the Conference adopted the draft final act of the United Nations/International Maritime Organization Conference of Plenipotentiaries on a Convention on Maritime Liens and Mortgages prepared by the Conference secretariat (A/CONF.162/L.4/Rev.1).*

25. At the signing ceremony held in the course of the closing meeting, the representatives of the following States signed the Final Act: Algeria, Argentina, Australia, Austria, Belgium, Brazil, Canada, China, Colombia, Côte d'Ivoire, Cuba, Cyprus, Democratic People's Republic of Korea, Denmark, Egypt, Finland, France, Gabon, Germany, Ghana, Greece, Guinea, India, Indonesia, Iran (Islamic Republic of), Israel, Italy, Japan, Kenya, Kuwait, Liberia, Madagascar, Mexico, Morocco, Netherlands, Nigeria, Norway, Panama, Peru, Philippines, Poland, Portugal, Republic of Korea, Russian Federation, Senegal, Spain, Sudan, Sweden, Switzerland, Syrian Arab Republic, Thailand, Tunisia, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America, Uruguay, and Venezuela.

26. After the signing of the Final Act, the Conference agreed that the Senior Legal Officer of UNCTAD should transmit the Final Act together with the signatures of the member States and the text of the International Convention on Maritime Liens and Mortgages, as adopted, to the depository at the United Nations Headquarters in New York.

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* For the text of the Final Act and the Convention, see volume I of these proceedings (A/CONF.162/7).

Concluding statements

27. The representative of Mexico reiterated his delegation's concern at some of the articles of the Convention which were incompatible with his national law. This was the case particularly for articles 4 and 5. Nevertheless, his delegation was not against the prevailing consensus of the Conference, and the Convention would be submitted to the Mexican authorities for consideration.

28. The representative of Colombia stated that his delegation was pleased with the consensus reached by the Conference. However, he wished to place on record that, in the form in which they had been approved by the Conference, article 4 (1) and article 5 (2) dealing with ranking of maritime liens were inconsistent with Colombian national legislation. Accordingly, this fact would be conveyed to the relevant Colombian authorities for their consideration.

29. The representative of China expressed satisfaction with the Convention. Valuable work had been carried out by the Joint Intergovernmental Group of Experts and the successful outcome of the Conference was due to the spirit of compromise shown by all delegations during the negotiations. He was convinced that the Convention would receive universal acceptance and that it would provide a legal framework to facilitate ship financing and the development of national merchant fleets and encourage uniformity of maritime law. Regarding article 16 dealing with temporary change of flag, he said that this provision, which had not been covered by the 1926 or 1967 Conventions, would be beneficial for ship financing.

30. The representative of Australia expressed his understanding of article 3(1) as intending to ensure that holders of registered mortgages, "hypothèques" or charges were protected in voluntary sale situations by not permitting deregistration without the deletion of mortgages or the consent of such holders. He noted that the second sentence in article 3(1) was meant to clarify the general obligation, as stated in the first sentence, to deal with cases where a change of ownership required involuntary deregistration of the vessel in accordance with the law of a State Party. He pointed out that this formulation should not be interpreted as barring a State Party from deregistering the vessel after a voluntary sale involved a change of nationality in the ownership of the vessel.

31. The representative of Spain expressed his satisfaction at the consensus and results achieved by the Conference. The Convention would improve conditions for ship financing and the development of national merchant fleets. Regarding the term "other sums" in article 4(1), he said that, in his view, the term included severance pay or compensation on grounds of dismissal, although this was not specifically spelled out. He noted with satisfaction the wording of article 13, according to which the Convention would also apply to all sea-going vessels not registered in a State Party, provided such vessels were subject to the jurisdiction of a State Party. He felt that the said article would ensure a high degree of uniformity at both the international and the national level. Finally, he emphasized the importance of an early ratification of the Convention.

32. The Secretary-General of the International Maritime Organization said that it was extremely gratifying that the new Convention on Maritime Liens and Mortgages had been adopted by consensus. Such consensus should lead to the early entry into force of the Convention. He emphasized the importance in this connection of the preparatory work done by the Joint Intergovernmental Group of Experts. A large number of ratifications would ensure that the instrument became universally accepted. Bearing in mind the terms of the resolution adopted by the Conference (see chapter II and annex I below), he promised the full commitment of the IMO secretariat to continue its co-operation with UNCTAD in the field of maritime law. Finally, he thanked the UNCTAD secretariat for the cooperation and assistance provided to the IMO officers who had participated in the Conference.

33. The Deputy Secretary-General of UNCTAD highlighted the importance of the new Convention in contributing to the harmonization of international maritime legislation and the encouragement of ship financing. He associated himself with the words of the Secretary-General of the International Maritime Organization regarding the outcome of the Conference and commended the spirit of compromise shown by all delegations in order to achieve a wide consensus in adopting the Convention. He welcomed further cooperation between the two organizations in the promotion and development of international maritime law and expressed satisfaction with the resolution adopted by the Conference. The law-making role of the United Nations in the economic and social fields was very important, and he noted with regret the weakening of this role in recent years.

Chapter II

CONSIDERATION AND ADOPTION OF FINAL RESOLUTIONS

(Agenda item 9)

34. At its 3rd (closing) plenary meeting, on 6 May 1993, the Conference adopted the draft resolution on the consideration of a possible review of the International Convention for the Unification of Certain Rules Relating to the Arrest of Sea-going Ships, 1952 (A/CONF.162/L.6), submitted by the Chairman of the Main Committee.*

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* For the resolution as adopted, see annex I below.

Chapter III

ORGANIZATIONAL MATTERS

A. Opening of the Conference

35. On behalf of the Secretary-General of UNCTAD, the Deputy to the Secretary-General of UNCTAD declared open the Conference of Plenipotentiaries on a Convention on Maritime Liens and Mortgages on 19 April 1993.

B. Election of the President
(Agenda item 2)

36. At its 1st plenary meeting, on 19 April 1993, the Conference elected by acclamation Mr. Walter Müller (Switzerland) to serve as President of the Conference.

C. Adoption of the rules of procedure
(Agenda item 3)

37. At the same meeting, the Conference adopted the provisional rules of procedure of the Conference prepared by the secretariats of UNCTAD and IMO (A/CONF.162/2), having first agreed to amend rule 3 and to make an editorial correction to rule 29. Subsequently, the UNCTAD secretariat circulated a note validating the rules of procedure as adopted and indicating the agreed modifications to rules 3 and 29 (cf. A/CONF.162/5).

D. Adoption of the agenda
(Agenda item 4)

38. At the same meeting, the Conference adopted the provisional agenda contained in section I of A/CONF.162/1. The agenda for the Conference therefore read as follows:

1. Opening of the Conference
2. Election of the President
3. Adoption of the rules of procedure
4. Adoption of the agenda
5. Organization of the work of the Conference
6. Election of other officers
7. Credentials:
   (a) Appointment of a Credentials Committee
   (b) Report of the Credentials Committee
8. Preparation and adoption of a convention on maritime liens and mortgages

9. Consideration and adoption of final resolutions

10. Other business

11. Adoption of the report of the Conference.

E. Organization of the work of the Conference (Agenda item 5)

39. At the same meeting, in accordance with rule 46 of the rules of procedure, the Conference established a Main Committee to deal with the entire set of draft articles, including final clauses. In accordance with rule 47, each State participating in the Conference was entitled to be represented on the Main Committee.

40. At its 2nd plenary meeting, on 23 April 1993, the Conference established a Drafting Committee. The Drafting Committee was open-ended with a selected core membership, taking into account the need for equitable geographical distribution. The core membership of the Drafting Committee was as follows: Algeria, Argentina, China, Côte d'Ivoire, Egypt, France, Germany, Indonesia, Mexico, Nigeria, Norway, Poland, Spain, Russian Federation, United Kingdom of Great Britain and Northern Ireland, and the United States of America.

F. Election of other officers (Agenda item 6)

41. At its 1st plenary meeting, on 19 April 1993, the Conference completed the election of its officers, in accordance with rule 6 of the rules of procedure, as follows:

Rapporteur-General:	Mr. Domingo Nicolas Rotondaro	(Argentina)
Vice-Presidents:	Mr. Jorgen Bredholt	(Denmark)
	Mr. George Cooper	(Liberia)
	Ms. Maria Dragun-Gertner	(Poland)
	Mr. Marc Gauthier	(Canada)
	Mr. Hu Jinglu	(China)
	Mr. Wyoso Prodjowarsito	(Indonesia)
	Mr. Walter de Sá Leitão	(Brazil)

42. At the same meeting, the Conference elected Mr. G.G. Ivanov (Russian Federation) to serve as Chairman of the Main Committee.

43. In accordance with rule 11 of the rules of procedure, the President, the Vice-Presidents, the Rapporteur-General and the Chairman of the Main Committee constituted the General Committee.

44. At its 1st meeting, on 27 April 1993, the Drafting Committee elected Mrs. Beate Czerwenka (Germany) to serve as its Chairman.

G. Credentials

(a) Appointment of a Credentials Committee

45. Also at its 1st meeting, the Conference appointed a Credentials Committee in accordance with rule 4 of the rules of procedure. The composition of the

Credentials Committee was based on that of the Credentials Committee of the United Nations General Assembly at its forty-seventh session. It was agreed that, should any of the States members of the Credentials Committee of the General Assembly not be represented at the Conference, the regional group concerned would be requested to nominate a replacement. Accordingly, the following nine member States constituted the Credentials Committee: Argentina, Australia, China, Ghana, India, Kenya, Russian Federation, United States of America, and Venezuela.

(b) Report of the Credentials Committee

46. At its 3rd (closing) meeting, on 6 May 1993 the Conference adopted the report of the Credentials Committee (A/CONF.162/6).

H. Adoption of the report of the Conference (Agenda item 11)

47. Also at its closing meeting, the Conference adopted its draft report (A/CONF.162/L.1) and authorized the Rapporteur-General to complete the final report as appropriate.

Annex I

RESOLUTION ADOPTED BY THE CONFERENCE

Consideration of a possible review of the International Convention for the Unification of Certain Rules Relating to the Arrest of Sea-going Ships, 1952

The United Nations/International Maritime Organization Conference of Plenipotentiaries on a Convention on Maritime Liens and Mortgages,

HAVING ADOPTED the International Convention on Maritime Liens and Mortgages, 1993,

BEARING IN MIND the recommendation of the UNCTAD/IMO Joint Intergovernmental Group of Experts on Maritime Liens and Mortgages and Related Subjects,

RECOMMENDS that the relevant bodies of UNCTAD and IMO, in the light of the outcome of the Conference, reconvene the Joint Intergovernmental Group with a view to examining the possible review of the International Convention for the Unification of Certain Rules Relating to the Arrest of Sea-going Ships, 1952 and invite the secretariats of UNCTAD and IMO, in consultation with relevant non-governmental organizations, such as the Comité Maritime International, to prepare the necessary documentation for the meetings of the Group.

Annex II

ATTENDANCE a/

1. The following States were represented at the Conference:

Algeria
Argentina
Australia
Austria
Belgium
Bolivia
Brazil
Bulgaria
Canada
Chile
China
Colombia
Côte d'Ivoire
Cuba
Cyprus
Democratic People's Republic of Korea
Denmark
Egypt
Finland
France
Gabon
Germany
Ghana
Greece
Guinea
India
Indonesia
Iran (Islamic Republic of)
Iraq
Israel
Italy
Japan
Kenya
Kuwait
Latvia
Liberia
Madagascar
Mauritius
Mexico
Morocco
Netherlands
Nigeria
Norway
Panama
Peru
Philippines
Poland
Portugal
Republic of Korea
Russian Federation
Senegal
Spain
Sri Lanka
Sudan
Sweden
Switzerland
Syrian Arab Republic
Thailand
Tunisia
Turkey
United Kingdom of Great Britain and Northern Ireland
United Republic of Tanzania
United States of America
Uruguay
Venezuela

2. The following associate member of IMO attended the Conference as an observer:

Hong Kong

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a/ For the list of participants, see A/CONF.162/INF.1.

3. The following specialized agencies were represented at the Conference:

International Labour Organisation
World Meteorological Organization

4. The following intergovernmental organizations were represented at the Conference:

European Economic Community
League of Arab States
Organisation for Economic Co-operation and Development
Organization of African Unity

5. The following non-governmental organizations were represented at the Conference:

Association of African National Shipping Lines b/
Baltic and International Maritime Council
Iberoamerican Institute of Maritime Law c/
International Association of Ports and Harbours
International Chamber of Commerce
International Chamber of Shipping
International Confederation of Free Trade Unions
International Maritime Committee
International Ship Suppliers Association
Latin American Association of Navigational Law and Law of the Sea

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b/ Participated by decision of the Conference at its 3rd plenary meeting, on 6 May 1993.

c/ Participated by decision of the Conference at its 1st plenary meeting, on 19 April 1993.